

UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF VIRGINIA
Richmond Division

SELECTIVE INSURANCE)
COMPANY OF AMERICA,)
)
Plaintiff,)
)
v.) Civil Action No.: 3:19-cv-00273-HEH
)
BFE CONSTRUCTION, INC, *et al.*,)
)
Defendants.)

JUDGMENT ORDER

On June 29, 2020, this matter was before the Court on two Motions filed by Plaintiff Selective Insurance Company of America (“Selective”—its Motion for Entry of an Order Holding Defendants in Contempt for Violation of Order Granting Preliminary Injunction, and for Sanctions (ECF No. 20), and its Motion for Judgment and Sanctions (ECF No. 37)—against Defendants, BFE Construction, Inc. (“BFE Construction”), BFE Strategies, Inc., f/k/a BFE Consultants, Inc. (“BFE Strategies”), Premier Homes, LLC (“Premier Homes”), and Alphonso Hugo Bowers (“Bowers”) (collectively, the “Indemnitors”). The parties, as represented by counsel, appeared and presented evidence and argument. The Indemnitors represented in open court that they consent to the entry of judgment, jointly and severally, as set forth below. Accordingly, the Court makes the following findings of fact and conclusions of law:

1. On or about April 26, 2016, the Indemnitors entered into a written General Agreement of Indemnity (the “GAI”) with Selective.

2. Under the terms and conditions of the GAI, each of the Indemnitors, jointly and severally, promised to exonerate, indemnify and save Selective harmless from and against any and all liability, loss, cost, damage and expense of whatsoever kind or nature, including, but not limited to, interest, court costs and counsel, attorneys, consulting, accounting and other professional and trade fees, which Selective may sustain, incur, be put to or to which it may be exposed (a) by reason of having executed any Bond or other instrument or any renewal, modification, continuation, substitution or extension thereof, (b) by reason of the failure of any one or more of the Indemnitors to perform or comply with the promises, covenants and conditions of the GAI or, (c) in enforcing any of the promises, covenants or conditions of the GAI. GAI, ¶ 3, pp 1-2.

3. In reliance upon the terms and conditions of the GAI, and the promises of the Indemnitors to indemnify and save it harmless from any and all losses, Selective considered and approved the requests of BFE Construction for the issuance of contract payment and performance bonds on multiple projects, including the following:

A. Animal Shelter Project

Obligee: County of Goochland, Virginia
Bond Nos.: B1189208
Bond Date: July 10, 2017
Amount: \$ 4,319,480.00

B. Elmont Water Storage Tank and Pump Station Project

Obligee: County of Hanover, Virginia
Bond Nos.: B1178314
Bond Date: September 26, 2016
Amount: \$ 3,599,990.00

C. Blackwell Senior Cottages Phase II Project

Obligee: Richmond Redevelopment and Housing Authority
Bond Nos.: B1195429
Bond Date: January 8, 2018
Amount: \$ 752,000.00

4. Under the terms and conditions of the April 26, 2016 GAI, the Indemnitors, jointly and severally, are obligated to comply with all of the terms and conditions of the GAI, and to indemnify and save Selective harmless from and against any and all liabilities, losses, damages, costs, charges, expenses, and consultants' and attorneys' fees incurred as a result of the issuance of any bond on behalf of BFE Construction.

5. As a result of Selective's issuance of the various payment and performance bonds at the request of the Indemnitors, Selective has suffered losses under its bonds and has incurred consultants' and attorneys' fees, costs, and expenses, on the bonded projects as follows:

A. **ANIMAL SHELTER PROJECT – COUNTY OF GOOCHLAND**

Losses:	\$2,582,839.37
Expenses:	<u>204,187.81</u>
Total:	\$2,787,027.18

B. **ELMONT PUMP STATION PROJECT – COUNTY OF HANOVER**

Losses:	\$390,721.92
Expenses:	<u>27,142.33</u>
Total:	\$417,864.25

C. **BLACKWELL SENIOR COTTAGES PHASE II PROJECT – RICHMOND REDEVELOPMENT AND HOUSING AUTHORITY**

Losses:	\$161,053.20
Expenses:	<u>23,236.50</u>
Total:	\$184,289.70

6. In addition, Selective has incurred, through June 24, 2020, consultants' and attorneys' fees, costs, and expenses, not yet paid, in the amount of \$48,207.48.

7. In total, pursuant to the terms of the GAI, Selective is owed \$3,437,388.61 by the Indemnitors for losses incurred, including consultants' and attorneys' fees, costs and expenses through June 24, 2020.¹

8. As a result, on April 11, 2019, Selective filed its Complaint for Indemnity and Quia Timet Relief ("Complaint") against the Indemnitors.

9. On April 19, 2019, upon a motion by Plaintiff, the Court held an initial hearing, which culminated in the issuance of a consensual preliminary injunction enjoining the Indemnitors, or anyone acting on their behalves, from destroying, selling, concealing, liquidating, or disposing of assets, real or personal property, except for legal expenses, without Plaintiff's approval (ECF No. 16). The preliminary injunction also prohibited the Indemnitors from denying Plaintiff access to certain documents and electronic records relating to assets and funds received from specifically-described contracts on which the Plaintiff had issued performance bonds. The preliminary injunction also specifically precluded the Indemnitors, or their agents, from utilizing or dissipating any contract funds received from the projects covered by the April 26, 2016 GAI.

¹ The agreed principal amount of judgment, agreed to by the parties, is different than the amount noted at the hearing on June 29, 2020 because the amount of Selective's consultants' fees, costs, and expenses was omitted from the amount discussed at the hearing. The parties have indicated that the amount in this Order is the agreed amount.

10. Prior to the April 19, 2019 hearing as well as thereafter, Indemnitors failed to file any responsive pleadings to Selective's Complaint.

11. On May 15, 2019, the Clerk of this Court entered default against all Indemnitors pursuant to Federal Rule of Civil Procedure 55(a). This began the extensive history of the Indemnitors' intransigent non-compliance that led to the hearing on June 29, 2020.

12. The Indemnitors consent to the entry of judgment in the amount of \$3,437,388.61, plus interest at the judgment rate until paid.

13. The Court finds that Selective continues to suffer and be exposed to losses by virtue of issuing its payment and performance bonds on the bonded projects, including continuing consultants' and attorneys' fees, costs, and expenses. This Court expressly reserves any and all rights of Selective under the GAI, and any other applicable provision of law, to pursue any additional claims for indemnity and/or indemnity for its consultants' and attorneys' fees, costs and expenses incurred in this matter after June 24, 2020.

In consideration of the findings of fact and conclusions of law adopted above, and of the Indemnitors' failure to file a timely pleading in response to the Complaint:

It is ORDERED that Plaintiff's Motion for Judgment is GRANTED IN PART (ECF No. 37), and Plaintiff's Motion for Entry of an Order Holding Defendants in Contempt for Violation of Order Granting Preliminary Injunction, and for Sanctions is DENIED AS MOOT (ECF No. 20).

Judgment is hereby AWARDED in favor of the Plaintiff, Selective Insurance Company of America, against Defendants BFE Construction, Inc., BFE Strategies, Inc., f/k/a BFE Consultants, Inc., Premier Homes, LLC, and Alphonso Hugo Bowers, jointly and severally, in the amount of \$3,437,388.61, plus post judgment interest, until paid;

The Clerk is DIRECTED to release and return to Selective the bond being held in the amount of \$1,000.00 upon entry of this Judgment Order;

The Clerk is further DIRECTED to place this matter among the causes ended.

IT IS SO ORDERED.



/s/
Henry E. Hudson
United States District Judge

Date: July 30, 2020
Richmond, Virginia

WE ASK FOR THIS:

/s/
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SEEN AND AGREED:

/s/

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